IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.54 OF 2006

Prakash Narayan Thakur Petitioner

versus

Eknath Narayan Thakur & anr. Respondents

Mr.N.V.Bandiwadekar for petitioner.

None for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 27th January 2006

PC :

1. Heard Shri Bandiwadekar. Respondent no.1 is the contesting respondent and he has been served. The affidavit proving service contains a proof of the petition and the annexures being served on the respondent no.1. Therefore, there is no impediment in proceeding with this petition. Respondent no.2 is original appellant no.2. Service on him is dispensed with. Rule. Returnable forthwith.

2. The order under challenge is delivered by

Additional District Judge, Raigad in Civil Miscellaneous Application No.122 of 2005.

3. The Civil Miscellaneous Application was preferred by the petitioner-original defendant no.1 in Regular Civil Suit No.70 of 2000 which was decreed by the Trial Court on 22nd March 2005. The suit was instituted by respondent no.1 herein and an ex-parte decree was passed by the Trial Court.

4. The petitioner-appellant filed an appeal to challenge this decree and since the same was delayed, presented an application for condonation of the same. The said application having been rejected, present petition under Article 227 of Constitution of India has been filed.

5. Shri Bandiwadekar appearing for petitioner submits that the Lower Appellate Court was in error in rejecting the application. He submits that sufficient cause was made out to condone the delay and decide the appeal on merits. Moreso, when it was directed against judgement and order rendered ex-parte by the Trial Court. He submits that in the grounds which have set out for seeking condonation of the delay, it was

specifically urged that the petitioner's son as well as his married daughter were ill and required medical treatment. Petitioner was busy rendering the same. In these circumstances, despite the petitioner being aware of passing of the decree, could not take immediate steps. Shri Bandiwadekar submits that first respondent has now taken steps to execute the decree. Petitioner would be dispossessed as the decree is for possession of immovable property. The appellant has a very good chance of success on merits. That being the position, the petitioner deserves an opportunity to make good his case.

6. With the assistance of Shri Bandiwadekar I have perused the application for condonation of delay. The petitioner in the said application has specifically pointed out that between March 2005 to first week of October 2005 the petitioner was disturbed apart from being busy in rendering medical assistance to his son and a married daughter. It is in first week of October 2005 that the petitioner approached his advocate and he was informed by the advocate in the Trial Court that the suit is decreed. The certified copy of the judgement and decree were obtained and the appeal came to be filed which is delayed

by about 209 days.

7. First respondent has, in the reply to this application for condonation of delay, high lighted the fact that the petitioner was absent in the Trial Court. It is his absence in the Trial Court and the decision of the Trial Court to proceed ex-parte, which is justified by first respondent. He also relies upon the fact that every day's delay has to be explained in law. Apart from observing that the reasons for condoning delay set out are vague, the Trial Court has accepted these pleas. The Lower Appellate Court has relied upon the medical certificate and by referring to the medical certificate issued in respect of petitioner's son, has observed that his son was fit to resume regular duties in March 2005 itself. As far as ailment of daughter is concerned, the Court below has accepted daughter's certificate but has faulted the petitioner in para no.9 of the impugned judgement for not making out a case that he was mentally disturbed during the entire period

8. The very purpose of the Supreme Court from time to time emphasising the aspect that words

"sufficient cause" have to be interpreted liberally and with a view to render substantial justice is defeated because of the approach of the learned Additional Sessions Judge. The Courts below must notice that all these aspects can be taken care of by compensating the successful party before it by imposing a condition of payment of substantial costs. That apart, one opportunity in the facts and circumstances of the present case was necessary to be afforded to the petitioner who has suffered an ex-parte decree for possession.

9. In these circumstances, Rule is made absolute in terms of prayer clause (b). Impugned order is set aside. Delay is condoned. Petitioner to pay costs quantified at Rs.1,500/- to the first respondent and upon proof of payment of costs quantified as above is produced, the Lower Appellate Court to restore the appeal on file and proceed on merits and in accordance with law. Ad-interim order granted by this Court to continue for a period of four weeks.

(S.C.DHARMADHIKARI, J.)